UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

North Texas Equal Access Fund;
Lilith Fund For Reproductive Equity,

Plaintiffs,

v.

Thomas More Society,

Defendant.

Case No. 1:22-cv-01399-MMP

MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION

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The plaintiffs' claims against the Thomas More Society are barred by Article III for four separate and independent reasons.

First, the injuries that the plaintiffs allege are not "fairly traceable" to the conduct of the Thomas More Society. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) ("[T]he injury has to be fairly . . . traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." (cleaned up)).

Second, the injuries that the plaintiffs allege are not traceable to "allegedly unlawful conduct" of the Thomas More Society. *See California v. Texas*, 141 S. Ct. 2104, 2113 (2021) ("A plaintiff has standing only if he can allege personal injury fairly traceable to the defendant's *allegedly unlawful conduct* and likely to be redressed by the requested relief." (emphasis added) (citation and internal quotation marks omitted)).

Third, the injuries that the plaintiffs allege are not "likely" to be redressed by declaratory or injunctive relief against the Thomas More Society. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) ("[I]t must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' " (citation omitted)).

Fourth, any case or controversy that might have existed between the plaintiffs and the defendant is moot because Ms. Maxwell and Ms. Weldon have terminated the Thomas More Society as their legal representative in the Rule 202 proceedings and will not retain them in any future legal action. *See* Brejcha Decl. at ¶¶ 11–15 (attached as Exhibit 5); Maxwell Decl. at ¶¶ 6–9 (attached as Exhibit 6); Weldon Decl. ¶¶ 6–9 (attached as Exhibit 7).

Each of these obstacles, standing alone, warrants dismissal of the complaint.

THE TEXAS ABORTION LAWS

The law of Texas restricts abortion in numerous ways. The Texas Heartbeat Act, also known as Senate Bill 8 or SB 8, prohibits abortion after a fetal heartbeat is detectable and authorizes private civil-enforcement suits against anyone who performs or "aids or abets" a post-heartbeat abortion. *See* Senate Bill 8, 87th Leg. (attached as Exhibit 1). SB 8 prohibits enforcement by public officials and leaves enforcement entirely in the hands of private citizens, which has frustrated efforts to obtain pre-enforcement relief against the statute's enforcement. *See* Tex. Health & Safety Code § 171.207; *Whole Woman's Health v. Jackson*, 142 S. Ct. 522 (2021). Anyone who violates SB 8 can be sued by "any person"[1] and ordered to pay at least $10,000 in statutory damages for each post-heartbeat abortion that they performed or facilitated, plus costs and attorneys' fees. Senate Bill 8 took effect on September 1, 2021, and it has remained in effect since that time.

The law of Texas also imposes felony criminal liability on anyone who "furnishes the means for procuring an abortion knowing the purpose intended"—regardless of whether the abortion occurs before or after a fetal heartbeat is detectable. *See* West's Texas Civil Statutes, article 4512.2 (1974) (attached as Exhibit 2).[2] Violations of article 4512.2 are punishable by two to five years imprisonment per abortion, and the statute of limitations is three years.[3] The State of Texas has never repealed this statute, and the legislature re-affirmed the continuing vitality of article 4512.2 when it enacted Senate Bill 8 last year. *See* Senate Bill 8, 87th Leg., § 2 (attached as Exhibit 1).

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1. Except Texas government officials and individuals who impregnated the mother of the fetus through rape or some other illegal act. *See* Tex. Health & Safety Code §§ 171.208(a); 171.208(j).
2. The full text of the statute says: "Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice." West's Texas Civil Statutes, article 4512.2 (1974).
3. The only exception is for abortions "procured or attempted by medical advice for the purpose of saving the life of the mother." West's Texas Civil Statutes, article 4512.6 (1974).

The Supreme Court's decisions in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), prevent Texas officials from enforcing article 4512.2 (and other provisions of the state's criminal abortion statutes) against abortion providers. But there is no constitutional obstacle to enforcing article 4512.2 against abortion funds and their donors, even while *Roe* and *Casey* remain on the books. Abortion funds and their donors do not have standing to assert the third-party rights of women seeking abortions as a defense to criminal prosecution. *See Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004) ("A party 'generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" (citation omitted)).[4] And in all events, a woman seeking an abortion has no constitutional right to have other people pay for it, *see Harris v. McRae*, 448 U.S. 297, 325 (1980), so no abortion patient will suffer an "undue burden" if abortion funds and their donors are prosecuted and imprisoned for violating article 4512.2.[5] There is also no constitutional right to perform or pay for another person's abortion; that is why abortion providers who challenge abortion regulations must invoke the third-party rights of their patients rather than assert their own constitutional rights. *See, e.g.*, *Planned Parenthood of Greater Ohio v. Hodges*, 917

4. The Supreme Court has allowed abortion doctors and abortion providers to assert the third-party rights of abortion patients, but no court has ever held that an abortion fund (or a donor to such a fund) has the necessary "close relation" needed to establish third-party standing. *See, e.g.*, *Singleton v. Wulff*, 428 U.S. 106, 117 (1976) (plurality opinion) (allowing *physicians* to assert third-party rights of their patients seeking abortions on account of the "patent" "closeness of the relationship"); *June Medical Services LLC v. Russo*, 140 S. Ct. 2103, 2118 (2020) (plurality opinion) ("We have long permitted abortion *providers* to invoke the rights of their actual or potential patients in challenges to abortion-related regulations." (emphasis added)).
5. *See also Planned Parenthood of Kansas and Mid-Missouri v. Moser*, 747 F.3d 814, 826 (10th Cir. 2014) ("There is a qualitative difference between prohibiting an activity and refusing to subsidize it. The Supreme Court, for instance, has drawn that line in rejecting state laws prohibiting certain abortions but not laws refusing to provide funds for the practice.").

F.3d 908, 912 (6th Cir. 2019) (en banc) ("The Supreme Court has never identified a freestanding right to perform abortions. To the contrary, it has indicated that there is no such thing."). Nor will the abortionist's immunity from prosecution on account of *Roe* preclude the imposition of accomplice liability on abortion funds and others who violate section 4512.2. *See* Tex. Penal Code § 7.03(2).

Yet abortion funds in Texas flout article 4512.2 with impunity, apparently unaware of its continued existence, or perhaps laboring under a belief that article 4512.2 was somehow "struck down" by the Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973). But courts do not have the ability or the authority to "strike down" or formally revoke statutes when pronouncing them unconstitutional. *See Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021) ("[F]ederal courts enjoy the power to enjoin individuals tasked with enforcing laws, not the laws themselves."); *Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 521–22 (7th Cir. 2021) ("A federal injunction does not erase an unconstitutional state law from existence; federal courts cannot repeal state laws. . . . An injunction operates on the enjoined officials; the law, regulation, or agency action remains on the books" (citations omitted)); *Pidgeon v. Turner*, 538 S.W.3d 73, 88 n.21 (Tex. 2017) ("We note that neither the Supreme Court in *Obergefell* nor the Fifth Circuit in *De Leon* 'struck down' any Texas law. When a court declares a law unconstitutional, the law remains in place unless and until the body that enacted it repeals it"). More importantly, the severability provisions in Texas law preserve all constitutional applications of the state's pre-*Roe* abortion statutes, allowing them to be enforced in situations that do not violate the constitutional rights of abortion patients. *See* Tex. Gov't Code § 311.032(c); Tex. Gov't Code § 311.036(c); *see also Connecticut v. Menillo*, 423 U.S. 9, 9–10 (1975) (allowing Connecticut to enforce its pre-*Roe* criminal abortion statutes against non-physician abortions). So article 4512.2 remains fully enforceable against abortion funds that pay for

abortions performed in Texas, as well as their donors, despite the continued existence of *Roe* and *Casey*.

FACTS

Each of the plaintiffs has violated Senate Bill 8 and article 4512.2, and in doing so they have exposed their employees, volunteers, and donors to private civil-enforcement suits and felony criminal prosecution. Kamyon Conner, the executive director of the North Texas Equal Access Fund, has executed a sworn declaration acknowledging that the TEA Fund paid for "at least one" post-heartbeat abortion in October of 2021. *See* Exhibit 3. Neesha Davé, the deputy director of the Lilith Fund, made a similar admission in a sworn declaration. *See* Exhibit 4. And each of the plaintiffs admits on its website that it pays for abortions performed in Texas[6]—in defiance of article 4512.2, which imposes felony criminal liability on anyone who "furnishes the means for procuring an abortion knowing the purpose intended."

In response to the plaintiffs' admitted violations of Senate Bill 8 and article 4512.2, Ashley Maxwell filed a Rule 202 petition in Texas state court against Kamyon Conner, seeking to depose Ms. Conner and discover information about the North Texas Equal Access Fund's employees, volunteers, and donors—all of whom could be held liable under SB 8 or prosecuted under article 4512.2. *See* Complaint, ECF No. 1 at ¶ 25, Exhibit C to Complaint, ECF No. 1-3. Sadie Weldon filed a similar Rule 202 petition against Neesha Davé in an attempt to discover similar information from the Lilith Fund. *See* Complaint, ECF No. 1 at ¶ 25, Exhibit B to Complaint, ECF No. 1-2. A Rule 202 petition is not a lawsuit, but a mere request for pre-suit

6. *See* https://www.lilithfund.org/portfolio/about ("We provide financial assistance and emotional support while building community spaces for people who need abortions in Texas—unapologetically, with compassion and conviction.") (last visited on April 21, 2022); http://www.teafund.org ("Texas Equal Access Fund provides emotional and financial support to people who are seeking abortion") (last visited on April 21, 2022).

discovery. *See Mayfield–George v. Texas Rehabilitation Commission*, 197 F.R.D. 280, 283–84 (N.D. Tex. 2000) (holding that a Rule 202 proceeding was not a "civil action" because "it asserts no claim or cause of action upon which relief may be granted" and that "[i]t is merely a petition for an order authorizing the taking of a deposition"). Neither Ms. Maxwell nor Ms. Weldon has sued the plaintiffs (or anyone else) under SB 8, nor have they threatened to sue the plaintiffs under SB 8's private civil-enforcement mechanism.

When Maxwell and Weldon filed their Rule 202 petitions, they were represented by eight different attorneys, including two attorneys from the Thomas More Society. *See* Exhibits B–C to Complaint, ECF Nos. 1-2 and 1-3. But Maxwell and Weldon terminated the Thomas More Society as their legal representative in early April, after this lawsuit was filed. *See* Brejcha Decl. at ¶¶ 11–15; Maxwell Decl. at ¶¶ 6–9; Weldon Decl. ¶¶ 6–9. The Thomas More Society is no longer representing Maxwell or Weldon, and it has no clients who are suing (or intend to sue) the plaintiffs under SB 8 or who wish to initiate Rule 202 proceedings against the plaintiffs. *See* Brejcha Decl. at ¶¶ 15–17.

SUMMARY OF ARGUMENT

The plaintiffs are understandably concerned about the potential civil and criminal liability that they are facing for their admitted violations of SB 8 and article 4512.2. But they have sued the wrong defendant. There is no Article III case or controversy between the plaintiffs and the Thomas More Society, and the case should be dismissed for lack of Article III standing.

The plaintiffs are suffering three injuries on account of their decisions to violate the Texas abortion laws. First, they have exposed themselves (and their employees, volunteers, and donors) to private civil-enforcement lawsuits under the Texas Heartbeat Act, because each of the plaintiffs has admitted to paying for at least one post-

heartbeat abortion in violation of SB 8. Second, the plaintiffs have exposed themselves (and their employees, volunteers, and donors) to potential criminal prosecution under article 4512.2, which imposes felony criminal liability on anyone who "furnishes the means for procuring an abortion knowing the purpose intended," regardless of whether the abortion is performed before or after a fetal heartbeat is detectable. Third, each of the plaintiffs is facing a Rule 202 petition that was filed in response to their admitted violations of SB 8, which seeks discovery that could expose additional violations of Texas law, as well as the identity of the plaintiffs' employees, volunteers, and donors who were complicit in violations of SB 8 and article 4512.2.

But none of these injuries can establish Article III standing because they are not "fairly traceable" to "allegedly unlawful conduct" of the Thomas More Society. The threat of private civil liability is not "fairly traceable" to the Thomas More Society because the Thomas More Society has no intention of suing the plaintiffs under the Heartbeat Act's private civil-enforcement mechanism, and it never had any such intention. *See* Brejcha Decl. at ¶¶ 5–8. Nor does the Thomas More Society have any intention of providing legal representation to individuals who decide to sue the plaintiffs under SB 8. *See* Brejcha Decl. at ¶ 7. The threat of criminal liability under article 4512.2 is not "fairly traceable" to the Thomas More Society because the decision whether to criminally prosecute the plaintiffs and their donors rests entirely with the district attorneys in Texas. And any injuries resulting from the Rule 202 petitions were caused by Ashley Maxwell and Sadie Weldon, not the Thomas More Society, as Ms. Maxwell and Ms. Weldon decided to file those petitions without any advice or input from the Thomas More Society and would have filed those petitions regardless of whether the Thomas More Society had been willing to represent them. *See* Brejcha Decl. at ¶ 10; Maxwell Decl. at ¶ 5; Weldon Decl. at ¶ 5.

The plaintiffs' lawsuit also flunks the "redressability" component of Article III standing, because there is no relief that the plaintiffs can obtain against the Thomas

More Society that will remove or in any way reduce the threat of civil and criminal sanctions for the plaintiffs' violations of Texas law. The plaintiffs will remain subject to private civil-enforcement lawsuits filed by "any person" under SB 8 even if this Court enters declaratory or injunctive relief against the Thomas More Society. The plaintiffs will likewise remain subject to felony criminal prosecution under article 4512.2 regardless of whether the Thomas More Society is any way restrained by a declaratory judgment or injunction from this Court. And the Rule 202 proceedings brought by Ms. Maxwell and Ms. Weldon will continue even if the Thomas More Society is enjoined from representing them. *See* Maxwell Decl. at ¶¶ 10–11; Weldon Decl. at ¶¶ 10–11.

Finally, any Article III case or controversy that might have existed between the plaintiffs and the Thomas More Society is moot because Ms. Maxwell and Ms. Weldon have terminated the Thomas More Society as their legal representative, and the Thomas More Society no longer has any involvement in the Rule 202 proceedings. Nor does the Thomas More Society have any intention of bringing Rule 202 proceedings against the plaintiffs on behalf of other individuals. *See* Brejcha Decl. at ¶¶ 16–17. So even if the Court concludes that the plaintiffs had standing at the outset of the lawsuit, it should still dismiss for lack of subject-matter jurisdiction because there is no conceivable case or controversy that remains between the plaintiffs and the defendant.

I. The Plaintiffs Lack Standing Because Their Injuries Are Not "Fairly Traceable" To The Conduct Of The Thomas More Society

To establish Article III standing, the plaintiffs must allege: (1) An injury in fact, that is (2) "fairly traceable" to the defendant's allegedly unlawful conduct; and (3) "likely to be redressed" by the requested relief. *See California v. Texas*, 141 S. Ct. 2104, 2113 (2021) ("A plaintiff has standing only if he can 'allege personal injury

fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006)). And the complaint must *specifically allege* the facts needed to establish each component of Article III standing. *See Spokeo, Inc. v. Robins,* 136 S. Ct. 1540, 1547 (2016) ("Where, as here, a case is at the pleading stage, the plaintiff must 'clearly . . . allege facts demonstrating' each element [of Article III standing.]" (citation omitted)); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013) ("[P]laintiffs bear the burden of pleading and proving concrete facts showing that the defendant's actual action has caused the substantial risk of harm."); *Whitmore v. Arkansas*, 495 U.S. 149, 155–56 (1990) ("The litigant must clearly and specifically set forth facts sufficient to satisfy these Art. III standing requirements."); *Warth v. Seldin*, 42 U.S. 490, 518 (1975) ("It is the responsibility of the complainant *clearly to allege facts demonstrating that* he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." (emphasis added)).

The plaintiffs are unquestionably suffering injury in fact because their violations of Texas's abortion laws have exposed them to the possibility of private civil-enforcement lawsuits under SB 8 and potential criminal prosecution under article 4512.2—and they cannot aid or abet abortions in Texas without aggravating the civil and criminal sanctions that will be imposed. *See, e.g.*, *Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988) (an "actual and well-founded fear" of prosecution sufficient to confer injury in fact). But the problem for the plaintiffs is that these injuries are not "fairly traceable" to the conduct of the Thomas More Society. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) ("If the plaintiff does not claim to have suffered an injury *that the defendant caused* and the court can remedy, there is no case or controversy for the federal court to resolve." (emphasis added) (citation and internal quotation marks omitted)).

The Thomas More Society has no intention of suing the plaintiffs (or anyone else) under SB 8's private civil-enforcement mechanism, and it has never had any such intention. *See* Brejcha Decl. at ¶¶ 5–6. The reason for this is obvious: Thomas More Society is not a resident or citizen of Texas and it would be unable to take advantage of SB 8's favorable venue rules for in-state residents. *See* Tex. Health & Safety Code § 171.210 (allowing residents of Texas, but not out-of-state residents, to sue in their home counties when bringing civil-enforcement suits under SB 8); Brejcha Decl. at ¶ 6 ("Thomas More Society would never serve as the plaintiff in a private civil-enforcement lawsuit under SB 8 because Thomas More Society is not a resident or citizen of Texas and would be unable to take advantage of the favorable venue rules established in section 171.210 of the Texas Health and Safety Code."). The Thomas More Society also has no intention providing legal representation to individuals who decide to sue the plaintiffs (or anyone affiliated with the plaintiffs) under SB 8. *See* Brejcha Decl. at ¶ 7 ("Thomas More Society also has no intention, and has never had any intention, of providing legal representation to plaintiffs who file private civil-enforcement lawsuits against the North Texas Equal Access Fund or the Lilith Fund for Reproductive Equity."); *see also id.* at ¶ 8 ("There is no conceivable scenario in which Thomas More Society would provide legal representation to a client who sues the North Texas Equal Access Fund or the Lilith Fund for Reproductive Equity, either before or after the Supreme Court overrules *Roe v. Wade*."). Because the Thomas More Society has forsworn any intention of suing the plaintiffs under SB 8, or providing representation to others who might sue the plaintiffs, it cannot be sued in a pre-enforcement lawsuit that challenges the constitutionality of SB 8's provisions. *See Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 537 (2021) ("In his appeal, Mr. Dickson argues that the petitioners lack standing to sue him because he possesses no intention to file an S.B. 8 suit against them. Mr. Dickson has supplied sworn declarations so attesting. The petitioners do not contest this testimony or ask us to disregard

it. Accordingly, on the record before us the petitioners cannot establish 'personal injury fairly traceable to [Mr. Dickson's] allegedly unlawful conduct.'" (citations omitted). Thomas More Society also lacks any ability to enforce the criminal laws of Texas, so it cannot be sued over the criminal sanctions threatened by article 4512.2. *See Brown v. De La Cruz*, 156 S.W.3d 560, 567 (Tex. 2004) (rejecting private rights of action to enforce criminal statutes). Any civil or criminal liability that the plaintiffs face (or fear) exists independent of Thomas More Society, which will never sue or prosecute the plaintiffs for their violations of Texas's abortion laws.

The plaintiffs also cannot sue the Thomas More Society over the Rule 202 proceedings that were filed by Ashley Maxwell and Sadie Weldon. Ms. Maxwell and Ms. Weldon decided to file those petitions without advice or input from the Thomas More Society, and they would have filed those petitions regardless of whether the Thomas More Society had served as their representatives in those proceedings. *See* Brejcha Decl. at ¶ 10; Maxwell Decl. at ¶ 5; Weldon Decl. at ¶ 5. Any "injury" resulting from the Rule 202 petitions is the product of independent actions of third parties not before the Court, and a litigant cannot establish Article III standing when the alleged injury rests on the conduct of independent third-party actors. *See Lujan*, 504 U.S. at 560 ("[T]he injury has to be fairly . . . traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." (cleaned up) (citation and internal quotation marks omitted)). It was the decision of Ms. Maxwell and Ms. Weldon to seek pre-suit discovery from the plaintiffs; the Thomas More Society had no part in that decision and became involved only after the decision to file the Rule 202 petitions had been made. *See* Brejcha Decl. at ¶ 10; Maxwell Decl. at ¶ 5; Weldon Decl. at ¶ 5.

The plaintiffs seem to think that they can sue the Thomas More Society by complaining about injuries that arise from the mere *existence* of SB 8 and article 4512.2, but the plaintiffs must allege facts explaining how their injuries are "fairly traceable"

to the *conduct* of the defendant that they have sued. *See California v. Texas*, 141 S. Ct. 2104, 2120 (2021) ("[T]he plaintiffs in this suit failed to show a concrete, particularized injury fairly traceable to the defendants' conduct in enforcing the specific statutory provision they attack as unconstitutional."). The plaintiffs are assuredly suffering injury in fact from the provisions of SB 8 and article 4512.2, which threaten them with civil and criminal penalties for their abortion-assistance activities. But none of these injuries are "fairly traceable" to anything that the Thomas More Society is doing. Litigants do not "challenge statutes" when they sue in federal court; they can challenge only the *behavior* of the defendant that has been sued. The Supreme Court made this clear in *California v. Texas*:

> The individual plaintiffs point to the statutory language, which, they say, commands them to buy health insurance. Brief for Respondent-Cross Petitioner Hurley et al. 19–20. But even if we assume that this pocketbook injury satisfies the injury element of Article III standing, see *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990), the plaintiffs nevertheless fail to satisfy the traceability requirement. Their problem lies in the fact that the statutory provision, while it tells them to obtain that coverage, has no means of enforcement. With the penalty zeroed out, the IRS can no longer seek a penalty from those who fail to comply. See 26 U.S.C. § 5000A(g) (setting out IRS enforcement only of the taxpayer's failure to pay the penalty, *not* of the taxpayer's failure to maintain minimum essential coverage). Because of this, there is no possible Government action that is causally connected to the plaintiffs' injury—the costs of purchasing health insurance. Or to put the matter conversely, that injury is not 'fairly traceable' to any 'allegedly unlawful conduct' of which the plaintiffs complain. *Allen v. Wright*, 468 U.S. 737, 751 (1984). They have not pointed to any way in which the defendants, the Commissioner of Internal Revenue and the Secretary of Health and Human Services, will act to enforce § 5000A(a). They have not shown how any other federal employees could do so either. In a word, they have not shown that any kind of Government action or conduct has caused or will cause the injury they attribute to § 5000A(a).

California v. Texas, 141 S. Ct. 2104, 2113–14 (2021). So too here. The plaintiffs are injured by the threats of civil and criminal liability imposed by SB 8 and article 4512.2,

in the same way that the plaintiffs in *California* were "injured" by the statutory command to purchase health insurance. But none of those injuries are "fairly traceable" to the conduct of the Thomas More Society, which has disclaimed any intent to sue under SB 8 and has no power to prosecute under article 4512.2. And any injuries imposed by the Rule 202 proceedings were caused by the independent actions of Ms. Maxwell and Ms. Weldon. *See Lujan*, 504 U.S. at 560 ("[T]he injury has to be fairly . . . traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." (cleaned up) (citation and internal quotation marks omitted)).

II. The Plaintiffs Lack Standing Because Their Injuries Are Not Fairly Traceable To "Allegedly Unlawful Conduct" Of The Thomas More Society

Even if the plaintiffs could somehow establish a causal connection between their injuries and the conduct of the Thomas More Society, they *still* cannot establish Article III standing because they have not shown an injury caused by the Thomas More Society's "allegedly unlawful" conduct. *See California v. Texas*, 141 S. Ct. 2104, 2113 (2021) ("A plaintiff has standing only if he can allege personal injury fairly traceable to the defendant's *allegedly unlawful conduct*" (emphasis added) (citation and internal quotation marks omitted)); *id.* at 2116 ("[P]laintiffs have similarly failed to show that they have alleged an 'injury fairly traceable to the defendant's allegedly *unlawful* conduct.'" (citation omitted)). The plaintiffs have not alleged that the Thomas More Society did anything *unlawful* by providing legal representation to Ms. Maxwell or Ms. Weldon, and it would be preposterous to suggest that a law firm acts illegally by representing a client in a Rule 202 proceeding. *See* Complaint, ECF No. 1, at ¶¶ 25–31 (complaining about the Thomas More Society's representation of Maxwell and Weldon in the Rule 202 proceedings). Nor have the plaintiffs alleged that the Thomas More Society acted unlawfully by issuing press releases and social-media posts about

the Lilith Fund's violations of Texas's abortion statutes and warning others of the consequences for violations those laws—all of which is constitutionally protected speech. *See* Complaint, ECF No. 1, at ¶¶ 32–39 (complaining about the Thomas More Society's speech activities). Without a complaint that alleges *unlawful* conduct, the plaintiffs cannot satisfy the "traceability" prong of Article III standing. *See Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 537 (2021) (dismissing claim because "petitioners cannot establish personal injury fairly traceable to [the defendant's] *allegedly unlawful* conduct." (citation and internal quotation marks omitted)).

III. The Plaintiffs Lack Standing Because Their Injuries Are Not "Likely" To Be Redressed By The Requested Relief

There is a separate and independent obstacle to the plaintiffs' standing: None of the plaintiffs' injuries are likely to be redressed by declaratory or injunctive relief against the Thomas More Society. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) ("[I]t must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" (citation omitted)). Any relief that this Court might issue will be limited to the Thomas More Society—the only named defendant in this case. *See Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 535 (2021) ("[N]o court may lawfully enjoin the world at large, or purport to enjoin challenged laws themselves" (citations and internal quotation marks omitted)). And relief that is limited to the Thomas More Society will do nothing to redress or alleviate the plaintiffs' alleged injuries.

The injuries from the threat of private civil-enforcement suits will remain because the Thomas More Society never had any intention of suing the plaintiffs under SB 8, and it never had any intention of providing legal representation to clients who sue the plaintiffs under SB 8's private civil-enforcement mechanism. *See* Brejcha Decl. at ¶¶ 5–8. The injuries from the threat of criminal prosecution will remain because a declaratory judgment or injunction against the Thomas More Society does nothing

to restrain the district attorneys in Texas who will ultimately decide whether to prosecute the plaintiffs for their violations of article 4512.2. And the injuries from the Rule 202 proceedings will remain because Ms. Maxwell and Ms. Weldon will continue to pursue discovery with their remaining attorneys, even if the Thomas More Society is enjoined from providing legal representation in those proceedings. *See* Maxwell Decl. at ¶ 10–11; Weldon Decl. at ¶ 10–11.

Finally, the Thomas More Society does not have any other clients who intend to bring Rule 202 proceedings against either of the plaintiffs. *See* Brejcha Decl. at ¶ 16. And the Thomas More Society has no intention of representing other individuals who file Rule 202 petitions against the plaintiffs because it sees no need to bring Rule 202 petitions redundant to those already filed by Ms. Maxwell and Ms. Weldon. *See id.* at ¶ 17. Ms. Maxwell and Ms. Weldon's petitions will be sufficient to expose the plaintiffs' unlawful conduct and uncover the evidence needed to support future civil-enforcement actions and criminal prosecutions against the plaintiffs and their employees, volunteers, and donors. *See id.*

IV. Any Article III Case Or Controversy That Might Have Existed Between The Plaintiffs And The Thomas More Society Is Moot

Even if the Court concludes that the plaintiffs had Article III standing to sue the Thomas More Society when they filed the complaint, any case or controversy is now moot because Ms. Maxwell and Ms. Weldon have terminated the Thomas More Society as their legal representative in the Rule 202 proceedings and will not retain them in any future legal action. *See* Brejcha Decl. at ¶¶ 11–15; Maxwell Decl. at ¶¶ 6–9; Weldon Decl. ¶¶ 6–9. The Thomas More Society did not ask Ms. Maxwell and Ms. Weldon to terminate the attorney–client relationship, and the clients made this decision without input or encouragement from the Thomas More Society. *See* Brejcha Decl. at ¶ 14; Maxwell Decl. at ¶ 8; Weldon Decl. ¶ 8. So the "voluntary cessation"

exception to mootness is inapplicable, as the decision was made by the clients and was not the result of voluntary conduct undertaken by the Thomas More Society. *See United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953) ("[V]oluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot.").

Without the Thomas More Society's involvement in the Rule 202 proceedings, there is no conceivable injury that is "fairly traceable" to the allegedly unlawful conduct of the Thomas More Society. All that the plaintiffs have left to complain about are the tweets and press releases issued by the Thomas More Society[7]—which the plaintiffs do not even allege to be unlawful, and which they do not allege have caused them any Article III injury. Nor are the plaintiffs are seeking relief that would restrain the Thomas More Society from tweeting or speaking about the plaintiffs' violations of Texas's abortion laws and the consequences for violating these abortion statutes, and any such remedy would be a flagrant violation of the First Amendment. *See New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam). The plaintiffs have nothing left of their case now that Maxwell and Weldon have terminated the Thomas More Society's involvement in the Rule 202 proceedings.

7. *See* Complaint, ECF No. 1, ¶¶ 32–39.

CONCLUSION

The case should be dismissed for lack of subject-matter jurisdiction.

Respectfully submitted.

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Dated: April 21, 2022

CERTIFICATE OF SERVICE

I certify that on April 21, 2022, I served this document through CM/ECF upon all counsel of record in this case.

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Defendants

S.B. No. 8

AN ACT

relating to abortion, including abortions after detection of an unborn child's heartbeat; authorizing a private civil right of action.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as the Texas Heartbeat Act.

SECTION 2. The legislature finds that the State of Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger.

SECTION 3. Chapter 171, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

Sec. 171.201. DEFINITIONS. In this subchapter:

(1) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(2) "Gestational age" means the amount of time that has elapsed from the first day of a woman's last menstrual period.

(3) "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of

pregnancy.

(4) "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(5) "Pregnancy" means the human female reproductive condition that:

(A) begins with fertilization;

(B) occurs when the woman is carrying the developing human offspring; and

(C) is calculated from the first day of the woman's last menstrual period.

(6) "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances.

(7) "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.

Sec. 171.202. LEGISLATIVE FINDINGS. The legislature finds, according to contemporary medical research, that:

(1) fetal heartbeat has become a key medical predictor that an unborn child will reach live birth;

(2) cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;

(3) Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child; and

(4) to make an informed choice about whether to

continue her pregnancy, the pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based on the presence of cardiac activity.

Sec. 171.203. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT REQUIRED; RECORD. (a) For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

(b) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

(c) In making a determination under Subsection (b), the physician must use a test that is:

(1) consistent with the physician's good faith and reasonable understanding of standard medical practice; and

(2) appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.

(d) A physician making a determination under Subsection (b) shall record in the pregnant woman's medical record:

(1) the estimated gestational age of the unborn child;

(2) the method used to estimate the gestational age; and

(3) the test used for detecting a fetal heartbeat,

including the date, time, and results of the test.

Sec. 171.204. PROHIBITED ABORTION OF UNBORN CHILD WITH DETECTABLE FETAL HEARTBEAT; EFFECT. (a) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 171.203 or failed to perform a test to detect a fetal heartbeat.

(b) A physician does not violate this section if the physician performed a test for a fetal heartbeat as required by Section 171.203 and did not detect a fetal heartbeat.

(c) This section does not affect:

(1) the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or

(2) any other provision of state law that regulates or prohibits abortion.

Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS. (a) Sections 171.203 and 171.204 do not apply if a physician believes a medical emergency exists that prevents compliance with this subchapter.

(b) A physician who performs or induces an abortion under circumstances described by Subsection (a) shall make written notations in the pregnant woman's medical record of:

(1) the physician's belief that a medical emergency necessitated the abortion; and

(2) the medical condition of the pregnant woman that prevented compliance with this subchapter.

(c) A physician performing or inducing an abortion under this section shall maintain in the physician's practice records a copy of the notations made under Subsection (b).

Sec. 171.206. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not create or recognize a right to abortion before a fetal heartbeat is detected.

(b) This subchapter may not be construed to:

(1) authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter;

(2) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or

(3) restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT. (a) Notwithstanding Section 171.005 or any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 171.208. No enforcement of this subchapter, and no enforcement of Chapters 19 and 22, Penal Code, in response to violations of this subchapter, may be taken or threatened by this state, a political subdivision, a district or county attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided in Section 171.208.

(b) Subsection (a) may not be construed to:

(1) legalize the conduct prohibited by this subchapter or by Chapter 6-1/2, Title 71, Revised Statutes;

(2) limit in any way or affect the availability of a remedy established by Section 171.208; or

(3) limit the enforceability of any other laws that regulate or prohibit abortion.

Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR ABETTING VIOLATION. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:

(1) performs or induces an abortion in violation of this subchapter;

(2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter; or

(3) intends to engage in the conduct described by Subdivision (1) or (2).

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter;

(2) statutory damages in an amount of not less than $10,000 for each abortion that the defendant performed or induced in violation of this subchapter, and for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted; and

(3) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsection (b)(2) in a previous action for that particular abortion performed or induced in violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.

(d) Notwithstanding Chapter 16, Civil Practice and Remedies Code, or any other law, a person may bring an action under this section not later than the fourth anniversary of the date the cause of action accrues.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

(2) a defendant's belief that the requirements of this subchapter are unconstitutional or were unconstitutional;

(3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this subchapter;

(4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) non-mutual issue preclusion or non-mutual claim preclusion;

(6) the consent of the unborn child's mother to the abortion; or

(7) any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 171.209.

(f) It is an affirmative defense if:

(1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this subchapter; or

(2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this subchapter.

(f-1) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.

(g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth

Amendment of the United States Constitution, or by Section 8, Article I, Texas Constitution.

(h) Notwithstanding any other law, this state, a state official, or a district or county attorney may not intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(i) Notwithstanding any other law, a court may not award costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the supreme court under Section 22.004, Government Code, to a defendant in an action brought under this section.

(j) Notwithstanding any other law, a civil action under this section may not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other act prohibited by Sections 22.011, 22.021, or 25.02, Penal Code.

Sec. 171.209. CIVIL LIABILITY: UNDUE BURDEN DEFENSE LIMITATIONS. (a) A defendant against whom an action is brought under Section 171.208 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(1) the United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

(2) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing

established by the United States Supreme Court.

(b) A defendant in an action brought under Section 171.208 may assert an affirmative defense to liability under this section if:

(1) the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Subsection (a); and

(2) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.

(c) A court may not find an undue burden under Subsection (b) unless the defendant introduces evidence proving that:

(1) an award of relief will prevent a woman or a group of women from obtaining an abortion; or

(2) an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

(d) A defendant may not establish an undue burden under this section by:

(1) merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

(2) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

(e) The affirmative defense under Subsection (b) is not available if the United States Supreme Court overrules *Roe v. Wade*,

410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 171.208 occurred before the Supreme Court overruled either of those decisions.

(f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 171.208, and a court may not award relief under Section 171.208 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

Sec. 171.210. CIVIL LIABILITY: VENUE. (a) Notwithstanding any other law, including Section 15.002, Civil Practice and Remedies Code, a civil action brought under Section 171.208 shall be brought in:

(1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3) the county of the principal office in this state of any one of the defendants that is not a natural person; or

(4) the county of residence for the claimant if the claimant is a natural person residing in this state.

(b) If a civil action is brought under Section 171.208 in any one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED. (a) This section prevails over any conflicting law, including:

(1) the Uniform Declaratory Judgments Act; and

(2) Chapter 37, Civil Practice and Remedies Code.

(b) This state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise.

(c) A provision of state law may not be construed to waive or abrogate an immunity described by Subsection (b) unless it expressly waives immunity under this section.

Sec. 171.212. SEVERABILITY. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.

(b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be

severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this chapter to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden.

(b-1) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and Texas Constitution.

(c) The legislature further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word,

or applications of this chapter, were to be declared unconstitutional or to represent an undue burden.

(d) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(e) No court may decline to enforce the severability requirements of Subsections (a), (b), (b-1), (c), and (d) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or United States Constitution;

(2) is not a formal amendment of the language in a statute; and

(3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

SECTION 4. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.022 to read as follows:

Sec. 30.022. AWARD OF ATTORNEY'S FEES IN ACTIONS CHALLENGING ABORTION LAWS. (a) Notwithstanding any other law, any

person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney's fees of the prevailing party.

(b) For purposes of this section, a party is considered a prevailing party if a state or federal court:

(1) dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief described by Subsection (a), regardless of the reason for the dismissal; or

(2) enters judgment in the party's favor on any such claim or cause of action.

(c) Regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, a prevailing party under this section may bring a civil action to recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by Subsection (a) not later than the third anniversary of the date on which, as applicable:

(1) the dismissal or judgment described by Subsection (b) becomes final on the conclusion of appellate review; or

(2) the time for seeking appellate review expires.

(d) It is not a defense to an action brought under Subsection (c) that:

(1) a prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action;

(2) the court in the underlying action declined to recognize or enforce the requirements of this section; or

(3) the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

SECTION 5. Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.036 to read as follows:

Sec. 311.036. CONSTRUCTION OF ABORTION STATUTES. (a) A statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing statute explicitly states that it is repealing the other statute.

(b) A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute.

(c) Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion

is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and Texas Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution.

SECTION 6. Section 171.005, Health and Safety Code, is amended to read as follows:

Sec. 171.005. COMMISSION [~~DEPARTMENT~~] TO ENFORCE; EXCEPTION. The commission [~~department~~] shall enforce this chapter except for Subchapter H, which shall be enforced exclusively through the private civil enforcement actions described by Section 171.208 and may not be enforced by the commission.

SECTION 7. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.008 to read as follows:

Sec. 171.008. REQUIRED DOCUMENTATION. (a) If an abortion is performed or induced on a pregnant woman because of a medical emergency, the physician who performs or induces the abortion shall execute a written document that certifies the abortion is necessary due to a medical emergency and specifies the woman's medical condition requiring the abortion.

(b) A physician shall:

(1) place the document described by Subsection (a) in the pregnant woman's medical record; and

(2) maintain a copy of the document described by Subsection (a) in the physician's practice records.

(c) A physician who performs or induces an abortion on a pregnant woman shall:

(1) if the abortion is performed or induced to preserve the health of the pregnant woman, execute a written document that:

(A) specifies the medical condition the abortion is asserted to address; and

(B) provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition; or

(2) for an abortion other than an abortion described by Subdivision (1), specify in a written document that maternal health is not a purpose of the abortion.

(d) The physician shall maintain a copy of a document described by Subsection (c) in the physician's practice records.

SECTION 8. Section 171.012(a), Health and Safety Code, is amended to read as follows:

(a) Consent to an abortion is voluntary and informed only if:

(1) the physician who is to perform or induce the abortion informs the pregnant woman on whom the abortion is to be performed or induced of:

(A) the physician's name;

(B) the particular medical risks associated with the particular abortion procedure to be employed, including, when

medically accurate:

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

(iii) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(D) the medical risks associated with carrying the child to term;

(2) the physician who is to perform or induce the abortion or the physician's agent informs the pregnant woman that:

(A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and

(C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest;

(3) the physician who is to perform or induce the abortion or the physician's agent:

(A) provides the pregnant woman with the printed materials described by Section 171.014; and

(B) informs the pregnant woman that those materials:

(i) have been provided by the commission [~~Department of State Health Services~~];

(ii) are accessible on an Internet website sponsored by the commission [~~department~~];

(iii) describe the unborn child and list agencies that offer alternatives to abortion; and

(iv) include a list of agencies that offer sonogram services at no cost to the pregnant woman;

(4) before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period:

(A) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed or induced;

(B) the physician who is to perform or induce the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;

(C) the physician who is to perform or induce the

abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

(D) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

(5) before receiving a sonogram under Subdivision (4)(A) and before the abortion is performed or induced and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

(1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO ME.

(2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

(3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.

(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.

(5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE HEARTBEAT.

(6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

___ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

___ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

___ MY UNBORN CHILD [~~FETUS~~] HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

(8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION

PROCEDURE. MY PLACE OF RESIDENCE IS:_____.

_____ _____

SIGNATURE DATE";

(6) before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the signed, written certification required by Subdivision (5); and

(7) the pregnant woman is provided the name of each person who provides or explains the information required under this subsection.

SECTION 9. Section 245.011(c), Health and Safety Code, is amended to read as follows:

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient;

[~~and~~]

(9) the number of previous induced abortions of the patient;

(10) whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion; and

(11) the information required under Sections 171.008(a) and (c).

SECTION 10. Every provision in this Act and every application of the provision in this Act are severable from each other. If any provision or application of any provision in this Act to any person, group of persons, or circumstance is held by a court to be invalid, the invalidity does not affect the other provisions or applications of this Act.

SECTION 11. The change in law made by this Act applies only to an abortion performed or induced on or after the effective date of this Act.

SECTION 12. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 8 passed the Senate on March 30, 2021, by the following vote: Yeas 19, Nays 12; and that the Senate concurred in House amendments on May 13, 2021, by the following vote: Yeas 18, Nays 12.

Secretary of the Senate

I hereby certify that S.B. No. 8 passed the House, with amendments, on May 6, 2021, by the following vote: Yeas 83, Nays 64, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

West's Texas Statutes and Codes

Volume 4

REVISED CIVIL STATUTES

Articles 2461 to 5561

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deformity or injury, by any system or method, or to effect cures thereof.

2. Who shall diagnose, treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; provided, however, that the provisions of this Article shall be construed with and in view of Article 740, Penal Code of Texas [1] and Article 4504, Revised Civil Statutes of Texas as contained in this Act.

[1925 P.C.; Acts 1949, 51st Leg., p. 160, ch. 94, § 20(b); Acts 1953, 53rd Leg., p. 1029, ch. 426, § 11.]

[1] See, now, article 4504a.

Art. 4510b. Unlawfully Practicing Medicine; Penalty

Any person practicing medicine in this State in violation of the preceding Articles of this Chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty Dollars ($50), nor more than Five Hundred Dollars ($500), and by imprisonment in the county jail for not more than thirty (30) days. Each day of such violation shall be a separate offense.

[1925 P.C.; Acts 1939, 46th Leg., p. 352, § 10.]

Art. 4511. Definitions

The terms, "physician," and "surgeon," as used in this law, shall be construed as synonymous, and the terms, "practitioners," "practitioners of medicine," and, "practice of medicine," as used in this law, shall be construed to refer to and include physicians and surgeons.

[Acts 1925, S.B. 84.]

Art. 4512. Malpractice Cause for Revoking License

Any physician or person who is engaged in the practice of medicine, surgery, osteopathy, or who belongs to any other school of medicine, whether they used the medicines in their practice or not, who shall be guilty of any fraudulent or dishonorable conduct, or of any malpractice, or shall, by any untrue or fraudulent statement or representations made as such physician or person to a patient or other person being treated by such physician or person, procure and withhold, or cause to be withheld, from another any money, negotiable note, or thing of value, may be suspended in his right to practice medicine or his license may be revoked by the district court of the county in which such physician or person resides, or of the county where such conduct or malpractice or false representations occurred, in the manner and form provided for revoking or suspending license of attorneys at law in this State.

[Acts 1925, S.B. 84.]

CHAPTER SIX ½. ABORTION

Article
4512.1 Abortion.
4512.2 Furnishing the Means.
4512.3 Attempt at Abortion.
4512.4 Murder in Producing Abortion.
4512.5 Destroying Unborn Child.
4512.6 By Medical Advice.

Art. 4512.1 Abortion

If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused.

[1925 P.C.]

Art. 4512.2 Furnishing the Means

Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

[1925 P.C.]

Art. 4512.3 Attempt at Abortion

If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

Art. 4512.4 Murder in Producing Abortion

If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder.

[1925 P.C.]

Art. 4512.5 Destroying Unborn Child

Whoever shall during parturition of the mother destroy the vitality or life in a child in a state of being born and before actual birth, which child would otherwise have been born alive, shall be confined in the penitentiary for life or for not less than five years.

[1925 P.C.]

Art. 4512.6 By Medical Advice

Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.

[1925 P.C.]

DECLARATION OF KAYMON CONNER

STATE OF TEXAS §

DALLAS COUNTY §

1. My name is Kaymon Conner. I am a resident of Denton County, Texas, over 21 years of age, competent, and capable of testifying to the facts stated in this Declaration.

2. I declare that the statements within this Declaration are within my personal knowledge, and are true and correct.

3. I am the Executive Director of North Texas Equal Access Fund ("TEA Fund"). As Executive Director, I am responsible for executing TEA Fund's mission, protecting the organization's financial health, and supervising staff and volunteers.

4. TEA Fund's mission is to foster reproductive justice. It provides financial, emotional, and logistical support for low-income abortion patients in north Texas. Almost all of its clients are at a point in pregnancy when cardiac activity can be detected.

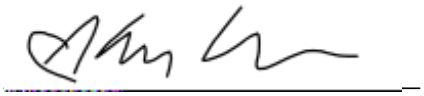
5. SB8 specifically states that providing funds to assist a pregnant person in obtaining an abortion violates SB8 *even if* the funder had no knowledge that the abortion at issue would ultimately violate SB8. Consequently, SB8, when it became effective, immediately rendered all of our services—even for people who have been pregnant fewer than six weeks—potentially subject to expensive litigation and punitive fines.

6. According to the terms of SB8, TEA Fund aids and abets abortions in the State of Texas by providing funding at all. It is my understanding that TEA Fund would also likely be liable for assisting pregnant people in locating legal abortion services by providing information, and by engaging in protected speech by advocating for safe, legal abortion services.

7. Since September 1, 2021, TEA Fund has engaged in conduct with the intent to assist pregnant Texans obtain abortions after the detection of cardiac activity. Specifically, following the entry of an injunction by the Honorable Robert Pitman on October 6, 2021, and while that injunction was still in place, TEA Fund paid for at least one abortion after confirming the gestational age of the fetus was beyond the time when cardiac activity is usually detected. In doing so, it was TEA Fund's intention to pay for the abortion even if cardiac activity was detected.

8. TEA Fund partners with several abortion provider clinics in Texas, including the clinics that have publicly confirmed that post-cardiac activity abortions were performed following the injunction issued by Judge Pitman.

9. I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct and that this Declaration was executed on this 3rd day of November, 2021.



Kamyon Conner

DECLARATION OF NEESHA DAVÉ

STATE OF TEXAS §

TRAVIS COUNTY §

1. My name is Neesha Davé. I am a resident of Travis County, Texas, over 21 years of age, competent, and capable of testifying to the facts stated in this Declaration.

2. I declare that the statements within this Declaration are within my personal knowledge, and are true and correct.

3. I am currently the Deputy Director, and from September 2 - November 1, 2021 served as the Acting Executive Director, for Lilith Fund for Reproductive Equity ("Lilith Fund"). As Deputy Director, I am responsible for executing Lilith Fund's mission, ensuring our programs are effective and efficient, and supervising staff and volunteers.

4. Lilith Fund provides financial assistance and emotional support for people needing abortions in Texas, and seeks to foster a positive culture around abortion. Lilith Fund also fights for reproductive justice throughout Texas. Lilith Fund offsets the costs of abortion care itself, rather than paying for or providing assistance to people traveling to an abortion provider in Texas.

5. Lilith Fund has nine staff members and more than thirty regular volunteers, and serves people in central and southeast Texas.

6. SB8 specifically states that providing funds to assist a pregnant person in obtaining an abortion violates SB8 *even if* the funder had no knowledge that the abortion at issue would ultimately violate SB8. Consequently, SB8, when it became effective, immediately rendered all of our services—even for people who have been pregnant fewer than six weeks—potentially subject to expensive litigation and punitive fines.

7. According to the terms of SB8, Lilith Fund aids and abets abortions in the State of Texas by providing funding at all. It is my understanding that Lilith Fund would also likely be liable for assisting pregnant people in locating legal abortion services by providing information, and by engaging in protected speech by advocating for safe, legal abortion services.

8. Since September 1, 2021, Lilith Fund has engaged in conduct with the intent to assist pregnant Texans obtain abortions after the detection of cardiac activity. Specifically, following the entry of an injunction by the Honorable Robert Pitman on October 6, 2021, Lilith Fund paid for at least one abortion without confirming the gestational age of the client's pregnancy and at least one abortion with the belief that the client's pregnancy was after the period in which cardiac activity is usually detectable. In doing so, it was Lilith Fund's intention to pay for the abortions even if cardiac activity was detected.

9. Lilith Fund partners with several abortion provider clinics in Texas, including the clinics that have publicly confirmed that post-cardiac activity abortions were performed following the injunction issued by Judge Pitman.

10. I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct and that this Declaration was executed on this 3rd day of November, 2021.

Neesha Davé

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

North Texas Equal Access Fund; **Lilith Fund For Reproductive Equity**, Plaintiffs, v. **Thomas More Society**, Defendant.	Case No. 1:22-cv-01399-MMP

DECLARATION OF THOMAS BREJCHA

I, Thomas Brejcha, declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I have personal knowledge of the facts stated in this declaration, and all of these facts are true and complete.

3. I submit this declaration in support of the defendant's motion to dismiss.

4. I am the President, Founder, and Chief Counsel of the Thomas More Society, which is the named defendant in this lawsuit. In my capacity as President and Chief Counsel, I have final authority regarding the clients and matters that the Thomas More Society accepts for representation, and all matters in which it undertakes to sue as a party plaintiff.

5. Thomas More Society has no intention, and has never had any intention, of suing the North Texas Equal Access Fund, the Lilith Fund for Reproductive Equity, or anyone else under the private right of action established in Texas's Senate Bill 8.

6. Thomas More Society would never serve as the plaintiff in a private civil-enforcement lawsuit under SB 8 because Thomas More Society is not a resident or citizen of Texas and would be unable to take advantage of the favorable venue rules established in section 171.210 of the Texas Health and Safety Code.

7. Thomas More Society also has no intention, and has never had any intention, of providing legal representation to plaintiffs who file private civil-enforcement lawsuits against the North Texas Equal Access Fund or the Lilith Fund for Reproductive Equity.

8. Thomas More Society has no interest in suing the North Texas Equal Access Fund or the Lilith Fund for Reproductive Equity under SB 8 because we are expecting the Supreme Court to overrule *Roe v. Wade*, 410 U.S. 113 (1973), when it announces its ruling in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, which will immediately criminalize abortion throughout the state of Texas and eliminate any need to enforce the state's abortion laws through private civil lawsuits. And I will not allow Thomas More Society to represent plaintiffs who file private civil-enforcement lawsuits under SB 8 before the Supreme Court overrules *Roe v. Wade*, because lawsuits of that sort could provide the state judiciary and subsequent appellate courts with an opportunity to pronounce the statute unconstitutional under *Roe*. There is no conceivable scenario in which Thomas More Society would provide legal representation to a client who sues the North Texas Equal Access Fund or the Lilith Fund for Reproductive Equity, either before or after the Supreme Court overrules *Roe v. Wade*.

9. Thomas More Society has provided legal representation to two individuals, Ashley Maxwell and Sadie Weldon, who filed Rule 202 petitions that seek to depose Kamyon Conner and Neesha Davé. Rule 202 petitions are not lawsuits, but requests for pre-suit discovery. Thomas More Society provided this representation not because it wishes to sue lawbreakers under SB 8 or provide representation in those civil-enforcement lawsuits, but because it wished to assist Maxwell and Weldon in discovering the identity of those who have violated the criminal laws of Texas by "furnishing the means for procuring an abortion knowing the purpose intended," *see* West's Texas

Civil Statutes, article 4512.2 (1974) (attached as Exhibit 3), and to encourage prosecutors throughout the state to pursue criminal investigations and prosecutions of those who have aided or abetted abortions in violation of article 4512.2.

10. The Thomas More Society had no involvement the decisions made by Ms. Maxwell or Ms. Weldon to file their Rule 202 petitions, and it did not in any way advice or encourage them to initiate these proceedings.

11. On April 5, 2022, I received a letter from Sadie Weldon informing me that she had terminated Thomas More Society and its attorneys as her representative "in all pending litigation involving the Lilith Fund for Reproductive Equity, effective immediately." An authentic copy of that letter is attached to this declaration as Exhibit 1.

12. Neither I nor anyone else at Thomas More Society asked Ms. Weldon to terminate us as her representative in these matters, nor did we suggest or insinuate that she should do so.

13. On April 6, 2022, I received a letter from Ashley Maxwell informing me that she had terminated Thomas More Society and its attorneys as her representative "in all pending litigation involving the North Texas Equal Access Fund, effective immediately." An authentic copy of that letter is attached to this declaration as Exhibit 2.

14. Neither I nor anyone else at Thomas More Society asked Ms. Maxwell to terminate us as her representative in these matters, nor did we suggest or insinuate that she should do so.

15. Thomas More Society is no longer serving as counsel in the Rule 202 proceedings involving Ms. Conner and Ms. Davé.

16. Thomas More Society does not have any clients that have any intention of filing Rule 202 petitions against the North Texas Equal Access Fund or the Lilith Fund for Reproductive Equity, or anyone affiliated with those organizations.

17. Thomas More Society has no intention of representing other individuals who file Rule 202 petitions against the North Texas Equal Access Fund or the Lilith Fund for Reproductive Equity, or anyone affiliated with those organizations, because there is no need to bring Rule 202 petitions redundant to those already filed by Ms. Maxwell and Ms. Weldon. Ms. Maxwell and Ms. Weldon's petitions will be sufficient to expose the plaintiffs' unlawful conduct and uncover the evidence needed to support future civil-enforcement actions and criminal prosecutions against the plaintiffs and their employees, volunteers, and donors who have violated the Texas abortion laws.

18. The plaintiffs' claim that Thomas More Society "has threatened to file" civil-enforcement lawsuits against the plaintiffs is false. *See* Complaint, ECF No. 1, at ¶ 1. Thomas More Society has never threatened to sue the plaintiffs or anyone affiliated with the plaintiffs under Senate Bill 8, and it has never had any intention of doing so.

19. The plaintiffs' claim that Thomas More Society is "presently coordinating with others to file" civil-enforcement lawsuits against the plaintiffs is false. *See* Complaint, ECF No. 1, at ¶ 1. Thomas More Society has never coordinated with anyone who intends to sue the plaintiffs or anyone affiliated with the plaintiffs under Senate Bill 8, and it has never had any intention of doing so.

20. The plaintiffs' claim that Thomas More Society "has publicly declared its intention to sue Plaintiffs under SB8, and to assist others in suing Plaintiffs under SB8" is false. *See* Complaint, ECF No. 1, at ¶ 4. Thomas More Society has never publicly declared its intent to sue the plaintiffs or anyone affiliated with the plaintiffs under SB 8, or to assist others who would sue the plaintiffs or anyone affiliated with the plaintiffs under SB 8, and it has never had any intention of doing so.

21. The plaintiffs' claim that Thomas More Society is "organizing and planning to bring lawsuits against Plaintiffs" is false. *See* Complaint, ECF No. 1, at ¶ 61. Thomas More Society has never organized or planned to bring a lawsuit against either

of the plaintiffs, or anyone affiliated with the plaintiffs, and it has never had any intention of doing so. A Rule 202 petition is not a lawsuit.

This concludes my sworn statement. I declare under penalty of perjury that the facts stated in this declaration are true and correct.

DocuSigned by:
Tom Brejcha
027041EC3B1C4D2...

Dated: 4/21/2022

THOMAS BREJCHA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

North Texas Equal Access Fund; **Lilith Fund For Reproductive Equity**, Plaintiffs, v. **Thomas More Society**, Defendant.	Case No. 1:22-cv-01399-MMP

DECLARATION OF ASHLEY MAXWELL

I, Ashley Maxwell, declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I have personal knowledge of the facts stated in this declaration, and all of these facts are true and complete.

3. I submit this declaration in support of the defendant's motion to dismiss.

4. I decided to file a Rule 202 petition against Kamyon Conner, the executive director of the North Texas Equal Access Fund, when I learned that the TEA Fund had admitted to paying for abortions in violation of the Texas Heartbeat Act.

5. I made this decision before retaining the Thomas More Society as my legal representative. Thomas More Society had no involvement in this decision, and it did not in any way advise or encourage me to initiate these Rule 202 proceedings.

6. I terminated the Thomas More Society and its attorneys as my legal representative in all litigation involving the TEA Fund by letter dated April 6, 2022. An authentic copy of that letter is attached to this declaration as Exhibit A.

7. I will not be retaining the Thomas More Society or its attorneys to serve as my representative in any future litigation or legal matter.

8. No one at the Thomas More Society asked me to terminate them as my representative, and they did not suggest or insinuate that I should do so.

9. Thomas More Society is no longer serving as my counsel in the Rule 202 proceedings involving Ms. Conner.

10. My decision to terminate the Thomas More Society as my representative will not in any way effect my efforts to discover information from Ms. Conner and the TEA Fund, and the Rule 202 proceedings will continue to go forward with my other attorneys.

11. I will continue to pursue Rule 202 discovery from Ms. Conner and the TEA Fund with my remaining attorneys, even if this Court enjoins the Thomas More Society from providing representation or declares its representation unlawful.

This concludes my sworn statement. I declare under penalty of perjury that the facts stated in this declaration are true and correct.

DocuSigned by:
Ashley Maxwell
DCA5CBE02BCC4B0...

Dated: 4/21/2022

ASHLEY MAXWELL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

North Texas Equal Access Fund;
Lilith Fund For Reproductive Equity,

Plaintiffs,

v.

Thomas More Society,

Defendant.

Case No. 1:22-cv-01399-MMP

DECLARATION OF SADIE WELDON

I, Sadie Weldon, declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I have personal knowledge of the facts stated in this declaration, and all of these facts are true and complete.

3. I submit this declaration in support of the defendant's motion to dismiss.

4. I decided to file a Rule 202 petition against Neesha Davé, the deputy director of the Lilith for Reproductive Equity, when I learned that the Lilith Fund had admitted to paying for abortions in violation of the Texas Heartbeat Act.

5. I made this decision before retaining the Thomas More Society as my legal representative. Thomas More Society had no involvement in this decision, and it did not in any way advise or encourage me to initiate these Rule 202 proceedings.

6. I terminated the Thomas More Society and its attorneys as my legal representative in all litigation involving the Lilith Fund by letter dated April 5, 2022. An authentic copy of that letter is attached to this declaration as Exhibit A.

7. I will not be retaining the Thomas More Society or its attorneys to serve as my representative in any future litigation or legal matter.

8. No one at the Thomas More Society asked me to terminate them as my representative, and they did not suggest or insinuate that I should do so.

9. Thomas More Society is no longer serving as my counsel in the Rule 202 proceedings involving Ms. Davé.

10. My decision to terminate the Thomas More Society as my representative will not in any way effect my efforts to discover information from Ms. Davé and the Lilith Fund, and the Rule 202 proceedings will continue to go forward with my other attorneys.

11. I will continue to pursue Rule 202 discovery from Ms. Davé and the Lilith Fund with my remaining attorneys, even if this Court enjoins the Thomas More Society from providing representation or declares its representation unlawful.

This concludes my sworn statement. I declare under penalty of perjury that the facts stated in this declaration are true and correct.

Dated: 4/21/2022

DocuSigned by:
SW
329CEF3405F8431...

SADIE WELDON